

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7456 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

J L MAKWANA

Versus

SYNDICATE BANK

Appearance:

MR MR ANAND for Petitioner

MR PV NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 06/10/2000

ORAL JUDGEMENT

#. The petitioner has filed this petition against the order made by the competent authority terminating the services of the petitioner from Syndicate Bank and the order made by the appellate authority confirming the said order.

#. From the chargesheet dated 16th July, 1991, it is very clear that the petitioner was working as a Clerk in the Syndicate Bank at its Bhupal Branch. The petitioner was found indulging in various irregularities and fraud by making alterations in cash scroll/Day Book and denominations in the slips. On 3.7.91, while working as cashier, one debit voucher for Rs. 821/- was entered by the petitioner in scroll as Rs. 1821/- instead of Rs. 821/- and thereby shown the excess payment of Rs. 1,000/-. With a view to offset the difference of Rs. 1,000/- in the cash scroll and the manager's scroll, the petitioner managed to alter SB cheque for Rs. 500/- of SB No. 1360 and Rs. 1500/- in Manager's scroll only with a view to see that the scrolls are made to tally at the end of the day. The petitioner was in charge of Day Book department also and he also raised SB debit figure by Rs. 1000/- both in OG 167 and in Day Book. He inserted extra cheque no. 262747 dated 3.7.91 for Rs. 1,000/- in the slip bundle to justify the increase in SB Debit and he changed the number of SB instruments from 9 to 10 in OG 167. The cheque in question was written by the petitioner and the denomination mentioned on the back of the cheque as Rs. 100 x 10 was written by the petitioner and cash paid seal and specimen signature verified seal were put on the cheque by the petitioner. However, the cheque did not bear signature of the cashier and Passing Officer. Over and above this, there is a reference to two transactions viz. (i) By crediting the loan installments tendered by the customers amounting to Rs. 400/- on 26.6.91 whereas counterfoils were given by the petitioner on 19.6.91 and 21.6.91 (Rs. 200/each). (ii) The petitioner borrowed Rs. 500/- from Shri Somabhai Lallubhai Patel in February, 1990 and made a false entry in the Pass Book of the party on 7.1.91 for Rs. 5,000/- when the party insisted for money. On these charges, the petitioner initially replied to the effect that due to circumstances beyond his control, he had altered the slips. No doubt, the petitioner contended that it does not amount to misconduct. The respondent Bank however, gave full opportunity to the petitioner by holding inquiry. A report was submitted which clearly revealed that there was sufficient evidence against the delinquent. The Inquiry Officer analyzed the evidence in detail and after appreciating the evidence and comparing the documentary evidence, arrived at the conclusion. In the finding, it is concluded as under.

"He could not dislodge the documentary evidence and witnesses. The documentary evidence put forth by the management along with the

depositions of the management witnesses proved beyond doubt that the delinquent has committed various acts prejudicial to the interest of the bank."

The Inquiry Officer therefore held the charges as proved.

#. An appeal was preferred by the delinquent against the said order. There also, the appellate authority has analyzed the evidence in detail and as the appellate authority was satisfied about the sufficiency of evidence on record to sustain lapses of which the delinquent had been held guilty, observed that the report of the Inquiry Officer is backed by sufficient evidence oral as well as documentary and that the Inquiry Officer has given cogent reasons for his conclusion. It is further held that the disciplinary authority has rightly accepted the report of the Inquiry Officer. It is not necessary to discuss in further detail. Suffice it to say that the appellate authority has dismissed the appeal.

#. Learned counsel appearing for the petitioner submitted that the witness has not been examined and opportunity has not been given. That a letter dated 12.7.91 was written by the petitioner under threat or coercion and the same is not proved during the cross-examination. Learned counsel for the petitioner further submitted that the charges as referred hereinabove cannot be said to be misconduct. Learned counsel relied upon the decision of the Apex Court in the case of State of Punjab v. Diwan Chunilal, reported in AIR 1970 SC 2086. Relying upon this decision, he submitted that Somabhai Lallubhai was not examined and therefore, it cannot be said that reasonable opportunity was given to the petitioner and this denial of opportunity must result in allowing the application. It is required to be noted that in that case, the appellant Police Sub Inspector was charged with regard to inefficiency and dishonesty based on various adverse reports of superior officers only. The Police Sub Inspector was allowed to cross efficiency bar despite the aforesaid charges. Here in the instant case, even if the instances referred to hereinabove with regard to Somabhai Lallubhai are taken out, other serious charges are proved and the learned counsel for the petitioner could not point out as to how other charges are not proved which are serious in nature. So far as the letter is concerned, it is the petitioner who has come out with a case that the same was written under threat, coercion. It was for the petitioner to enter the witness box and satisfy the Inquiry Officer that he addressed the letter

on account of the threat administered. It is required to be noted that the letter written is in vernacular language and the officer working at the relevant point of time was from Kerala, who was not knowing the local language. That apart, in view of the sufficient oral evidence backed by the documentary evidence in the handwritings of the delinquent himself, it is not possible to accept the contention. With regard to misconduct, suffice it to say that in the instant case, it is a case of fraud and forgery of documents and the petitioner could not dislodge before the Inquiry Officer or the appellate authority.

#. This court is not sitting in appeal. The Apex Court has pointed out in the case of Apparel Export Promotion Council v. A.K. Chopra, reported in (1999) 1 SCC 759, as under.

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion on facts, being the sole fact finding authorities. Once findings of fact based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during the departmental proceedings while exercise powers of judicial review, the High Court, cannot normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even in so far as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well settled principle that even

though judicial review of administrative action must remain flexible and its dimensions not closed, yet the court, in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, is directed not against the decision, but is confined to the examination of the decision making process."

#. Keeping these principles in mind and the decisions rendered by both the authorities and particularly by the appellate authority which had a scope of review of evidence, on appreciating the evidence has dismissed the appeal at the instance of the delinquent it would not be just and proper for this Court to reappraise the evidence. When there is cogent, convincing and sufficient evidence against the delinquent, it would not be possible for this Court to interfere with the findings of facts which have been accepted by the appellate authority. In view of what is stated hereinabove, the petition must be dismissed and is hereby dismissed with no order as to costs. Rule is discharged.

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